

§ 303.0

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12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819, (Seventh and Tenth), 1820, 1823, 1828, 1831e, 1831p–1, 1835a, 3104, 3105, 3108; 3207; 15 U.S.C. 1601–1607.

SOURCE: 67 FR 79247, Dec. 27, 2002, unless otherwise noted.

§ 303.0 Scope.

(a) This part describes the procedures to be followed by both the FDIC and applicants with respect to applications, requests, or notices (filings) required to be filed by statute or regulation. Additional details concerning processing are explained in related FDIC statements of policy.

(b) Additional application procedures may be found in the following FDIC regulations:

(1) 12 CFR part 327—Assessments (Request for review of assessment risk classification);

(2) 12 CFR part 328—Advertisement of Membership (Application for temporary waiver of advertising requirements);

(3) 12 CFR part 345—Community Reinvestment (CRA strategic plans and requests for designation as a wholesale or limited purpose institution);

Subpart A—Rules of General Applicability

§ 303.1 Scope.

Subpart A prescribes the general procedures for submitting filings to the FDIC which are required by statute or regulation. This subpart also prescribes the procedures to be followed by the FDIC, applicants and interested parties during the process of considering a filing, including public notice and comment. This subpart explains the availability of expedited processing for eligible depository institutions (defined in § 303.2(r)). Certain terms used throughout this part are also defined in this subpart.

§ 303.2 Definitions.

Except as modified or otherwise defined in this part, terms used in this part that are defined in the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) have the meanings provided in the Federal Deposit Insurance Act. Additional definitions of terms used in this part are as follows:

(a) *Act* or *FDI Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) *Adjusted part 325 total assets* means adjusted 12 CFR part 325 total assets as

calculated and reflected in the FDIC's Report of Examination.

(c) *Adverse comment* means any objection, protest, or other adverse written statement submitted by an interested party relative to a filing. The term adverse comment shall not include any comment concerning the Community Reinvestment Act (CRA), fair lending, consumer protection, or civil rights that the appropriate regional director or designee determines to be frivolous (for example, raising issues between the commenter and the applicant that have been resolved). The term adverse comment also shall not include any other comment that the appropriate regional director or designee determines to be frivolous (for example, a non-substantive comment submitted primarily as a means of delaying action on the filing).

(d) *Amended order to pay* means an order to forfeit and pay civil money penalties, the amount of which has been changed from that assessed in the original notice of assessment of civil money penalties.

(e) *Applicant* means a person or entity that submits a filing to the FDIC.

(f) *Application* means a submission requesting FDIC approval to engage in various corporate activities and transactions.

(g) *Appropriate FDIC region* and *appropriate regional director* mean, respectively, the FDIC region and the FDIC regional director which the FDIC designates as follows:

(1) When an institution or proposed institution that is the subject of a filing or administrative action is not and will not be part of a group of related institutions, the appropriate FDIC region for the institution and any individual associated with the institution is the FDIC region in which the institution or proposed institution is or will be located, and the appropriate regional director is the regional director for that region; or

(2) When an institution or proposed institution that is the subject of a filing or administrative action is or will be part of a group of related institutions, the appropriate FDIC region for the institution and any individual associated with the institution is the FDIC region in which the group's

major policy and decision makers are located, or any other region the FDIC designates on a case-by-case basis, and the appropriate regional director is the regional director for that region.

(h) *Associate director* means any associate director of the Division of Supervision and Consumer Protection (DSC) or, in the event such title become obsolete, any official of equivalent authority within the division.

(i) *Book capital* means total equity capital which is comprised of perpetual preferred stock, common stock, surplus, undivided profits and capital reserves, as those items are defined in the instructions of the Federal Financial Institutions Examination Council (FFIEC) for the preparation of Consolidated Reports of Condition and Income for insured banks.

(j) *Comment* means any written statement of fact or opinion submitted by an interested party relative to a filing.

(k) *Corporation* or *FDIC* means the Federal Deposit Insurance Corporation.

(l) *CRA protest* means any adverse comment from the public related to a pending filing which raises a negative issue relative to the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*), whether or not it is labeled a protest and whether or not a hearing is requested.

(m) *Deputy director* means the deputy director of the Division of Supervision and Consumer Protection (DSC) or, in the event such title become obsolete, any official of equivalent or higher authority within the division.

(n) *Deputy regional director* means any deputy regional director of the Division of Supervision and Consumer Protection (DSC) or, in the event such title become obsolete, any official of equivalent authority within the same FDIC region of DSC.

(o) *Appropriate FDIC office* means the office designated by the appropriate regional director or designee.

(p) *DSC* means the Division of Supervision and Consumer Protection or, in the event the Division of Supervision and Consumer Protection is reorganized, such successor division.

(q) *Director* means the Director of the Division of Supervision and Consumer Protection (DSC) or, in the event such title become obsolete, any official of

equivalent or higher authority within the division.

(r) *Eligible depository institution* means a depository institution that meets the following criteria:

(1) Received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS) as a result of its most recent federal or state examination;

(2) Received a satisfactory or better Community Reinvestment Act (CRA) rating from its primary federal regulator at its most recent examination, if the depository institution is subject to examination under part 345 of this chapter;

(3) Received a compliance rating of 1 or 2 from its primary federal regulator at its most recent examination;

(4) Is well-capitalized as defined in the appropriate capital regulation and guidance of the institution's primary federal regulator; and

(5) Is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary federal regulator or chartering authority.

(s) *Filing* means an application, notice or request submitted to the FDIC under this part.

(t) *General Counsel* means the head of the Legal Division of the FDIC or any official within the Legal Division exercising equivalent authority for purposes of this part.

(u) *Insider* means a person who is or is proposed to be a director, officer, organizer, or incorporator of an applicant; a shareholder who directly or indirectly controls 10 percent or more of any class of the applicant's outstanding voting stock; or the associates or interests of any such person.

(v) *Institution-affiliated party* shall have the same meaning as provided in section 3(u) of the Act (12 U.S.C. 1813(u)).

(w) *NEPA* means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(x) *NHPA* means the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*).

(y) *Notice* means a submission notifying the FDIC that a depository insti-

tution intends to engage in or has commenced certain corporate activities or transactions.

(z) *Notice to primary regulator* means the notice described in section 8(a)(2)(A) of the Act concerning termination of deposit insurance (12 U.S.C. 1818(a)(2)(A)).

(aa) *Regional counsel* means a regional counsel of the Legal Division or, in the event the title becomes obsolete, any official of equivalent authority within the Legal Division.

(bb) *Regional director* means any regional director in the Division of Supervision and Consumer Protection (DSC), or in the event such title become obsolete, any official of equivalent authority within the division.

(cc) [Reserved]

(dd) *Standard conditions* means the conditions that the FDIC may impose as a routine matter when approving a filing, whether or not the applicant has agreed to their inclusion. The following conditions, or variations thereof, are standard conditions:

(1) That the applicant has obtained all necessary and final approvals from the appropriate federal or state authority or other appropriate authority;

(2) That if the transaction does not take effect within a specified time period, or unless, in the meantime, a request for an extension of time has been approved, the consent granted shall expire at the end of the specified time period;

(3) That until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend or withdraw its commitment should any interim development be deemed to warrant such action; and

(4) In the case of a merger transaction (as defined in §303.61(a) of this part), including a corporate reorganization, that the proposed transaction not be consummated before the 30th calendar day (or shorter time period as may be prescribed by the FDIC with the concurrence of the Attorney General) after the date of the order approving the merger transaction.

(ee) *Tier 1 capital* shall have the same meaning as provided in §325.2(v) of this chapter (12 CFR 325.2(v)).

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(ff) *Total assets* shall have the same meaning as provided in ¶ 325.2(x) of this chapter (12 CFR 325.2(x)).

[67 FR 79247, Dec. 27, 2002, as amended at 68 FR 50459, Aug. 21, 2003]

§ 303.3 General filing procedures.

Unless stated otherwise, filings should be submitted to the appropriate FDIC office. Forms and instructions for submitting filings may be obtained from any FDIC regional director. If no form is prescribed, the filing should be in writing; be signed by the applicant or a duly authorized agent; and contain a concise statement of the action requested. For specific filing and content requirements, consult the appropriate subparts of this part. The FDIC may require the applicant to submit additional information.

§ 303.4 Computation of time.

For purposes of this part, and except as otherwise specifically provided, the FDIC begins computing the relevant period on the day after an event occurs (e.g., the day after a substantially complete filing is received by the FDIC or the day after publication begins) through the last day of the relevant period. When the last day is a Saturday, Sunday or federal holiday, the period runs until the end of the next business day.

[67 FR 79247, Dec. 27, 2002, as amended at 68 FR 50459, Aug. 21, 2003]

§ 303.5 Effect of Community Reinvestment Act performance on filings.

Among other factors, the FDIC takes into account the record of performance under the Community Reinvestment Act (CRA) of each applicant in considering a filing for approval of:

- (a) The establishment of a domestic branch;
- (b) The relocation of the bank's main office or a domestic branch;
- (c) The relocation of an insured branch of a foreign bank;
- (d) A transaction subject to the Bank Merger Act; and
- (e) Deposit insurance.

§ 303.6 Investigations and examinations.

The FDIC may examine or investigate and evaluate facts related to any filing under this chapter to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances.

§ 303.7 Public notice requirements.

(a) *General.* The public must be provided with prior notice of a filing to establish a domestic branch, relocate a domestic branch or the main office, relocate an insured branch of a foreign bank, engage in a merger transaction, initiate a change of control transaction, or request deposit insurance. The public has the right to comment on, or to protest, these types of proposed transactions during the relevant comment period. In order to fully apprise the public of this right, an applicant shall publish a public notice of its filing in a newspaper of general circulation. For specific publication requirements, consult subparts B (Deposit Insurance), C (Branches and Relocations), D (Merger Transactions), E (Change in Bank Control), and J (International Banking) of this part.

(b) *Confirmation of publication.* The applicant shall mail or otherwise deliver a copy of the newspaper notice to the appropriate FDIC office as part of its filing, or, if a copy is not available at the time of filing, promptly after publication.

(c) *Content of notice.* (1) The public notice referred to in paragraph (a) of this section shall consist of the following:

(i) *Name and address of the applicant(s).* In the case of an application for deposit insurance for a de novo bank, include the names of all organizers or incorporators. In the case of an application to establish a branch, include the location of the proposed branch or, in the case of an application to relocate a branch or main office, include the current and proposed address of the office. In the case of a merger application, include the names of all parties to the transaction. In the case of a notice of acquisition of control, include the name(s) of the acquiring parties. In the